

Maricopa County  
Smoking Pollution  
Control Ordinance  
Draft

SECTION 1 Purpose of Article.

The purpose of this Article is to regulate smoking in public places and in places of employment in unincorporated areas of Maricopa County.

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and broncho-spasm.

Accordingly, the Maricopa County Board of Supervisors declares that the purpose of this ordinance is to protect the public health and welfare by prohibiting smoking in public places and places of employment.

SECTION 2 Definitions.

- a. "Accessory Bar" means a bar area of a restaurant. An "accessory bar" is a place within a restaurant for incidental service of alcoholic beverages, with gross receipts not exceeding 25 percent of gross receipts of the restaurant.
- b. "Business" means any employment, occupation, profession or commercial activity or enterprise engaged in for gain, benefit, advantage, or livelihood.
- c. "Employee" means any person in the service of another; working for salary or wages or on a volunteer basis.
- d. "Employer" means any person or entity that employs the services of others.
- e. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.
- f. "Freestanding Bar" means an establishment which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which their serving of food is only incidental to the consumption of such beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabaret.

- g. “Place of employment” means any area under the control of a private or public employer which employees normally frequent during the course of employment, including, but not limited to, work areas, offices, employee lounges, conference and meeting rooms, classrooms, employee cafeterias, employee stairways and hallways, waiting areas, restrooms and vehicles. A private residence is not a “place of employment” (unless it is used as a child care, adult day care, group home, health care facility, or similar licensed facility).
- h. “Public Place” means any area to which the public is invited or in which the public is permitted, which is available to and customarily used by the public, including but not limited to:
- airport service lines and airport waiting lounges,
  - aquariums, galleries, libraries, and museums, exhibit halls,
  - banks, financial institutions,
  - child care centers (public and private),
  - churches and other places of worship,
  - community centers,
  - health facilities, medical office buildings,
  - hotel and motel public areas,
  - laundromats,
  - lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities,
  - public and private educational facilities,
  - public restrooms,
  - public transportation facilities, taxi cabs or other means of public transit, ticket, boarding, and waiting areas of public transit depots,
  - reception areas, waiting rooms, indoor and outdoor service lines,
  - restaurants and accessory bars, cafeterias, lunchrooms and eating establishments, food service operations,
  - retail food production and marketing/grocery establishments,
  - retail service establishments,
  - retail stores, shopping malls, drugstore pharmacies
  - theaters and waiting rooms, indoor sports arenas and their lobbies, auditoriums, bingo halls, pool halls, all indoor facilities and any public places already regulated by ARS § 36-601-01.

A private residence is not a “public place.”

- i. “Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except a cocktail lounge or tavern if the cocktail lounge or tavern is a “bar” as defined in Section 2(f).
- j. “Retail Tobacco Store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

- k. “Separately Ventilated” means a heating, ventilating and air conditioning (HVAC) system service in an area that is negatively pressurized relative to any adjacent area where smoking is prohibited.
- l. “Service Line” means any indoor or outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- m. “Smoke” or “smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, plant, tobacco or other combustible substance in any manner or any form.
- n. “Sports arena” means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

### SECTION 3

This ordinance shall apply exclusively to unincorporated areas within Maricopa County.

### SECTION 4 Regulation of smoking in County-owned and operated facilities.

All enclosed facilities including buildings and vehicles owned, leased or rented by Maricopa County shall be subject to this Article.

### SECTION 5 Regulation of smoking in public places and places of employment.

Unless otherwise indicated in this Ordinance, smoking is prohibited in any public place or any business as defined in section 2(h.).

Smoking is restricted within 25 feet of any enclosed area where smoking is prohibited to ensure that tobacco smoke does not enter the enclosed area through entrances, windows, ventilation systems, air intake devices or any other means. To discourage smoking around doorways, all smoking trash receptacles will be placed beyond the 25-foot limit.

The provisions of this Article shall not be construed to limit the ability of the owner, operator or manager of a public place to declare the whole or any portion of that public place to be smokefree.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

### SECTION 6 Regulation of smoking in restaurants.

Smoking is prohibited in all restaurants and accessory bars, cafeterias, lunchrooms and eating establishments, and other food service operations.

## SECTION 7 Regulation of smoking in places of employment.

- a. Smoking is prohibited in employer offices, conference and meeting rooms, classrooms, auditoriums, restrooms, waiting areas, medical facilities, hallways, stairways and elevators and all other common areas.
- b. Restaurants may choose to allow smoking in an outdoor dining area at least 15 feet from smoking restricted areas and which does not require others to walk through it upon entering the restaurant. All areas must have signs posted as described in Section 10 of this Ordinance.
- c. The employer shall announce its smoking policy within three (3) months of adoption of this Ordinance to all of its employees working in locations in unincorporated areas of the County and shall post its written policy conspicuously in all work places under the employer's jurisdiction.
- d. Notwithstanding the other provisions of this section every employer shall have the right to designate any place of employment, or portion thereof, as a smoke-free area.
- e. No employee shall be terminated or subject to disciplinary action as a result of his or her complaint about smoking in the work place.

## SECTION 8 Free-Standing Bars

- a. Smoking will be permitted in freestanding bars for a period of thirty-six (36) months after the adoption of this ordinance, after which time smoking will be prohibited.
- b. Smoking may be permitted in an outdoor area at least 15 feet from smoking restricted areas which does not require others to walk through it upon entering the establishment. All areas must have signs posted as described in Section 10 of this Ordinance.

## SECTION 9 Smoking-optional areas.

- a. Notwithstanding any other provisions of this Article to the contrary, the following areas shall not be subject to the smoking restrictions of this Article, provided (i) such areas are physically separated by solid floors, walls, ceilings, or fixed glazing or any combination thereof and separately ventilated by elements and systems of construction which comply with the Maricopa County building and construction codes, (ii) doors serving such areas are designed, constructed and installed in such a manner which will not allow smoke or smoke by-products to migrate into an area where smoking is prohibited, (iii) doors are self-closing, self-latching, and self-sealing and maintained to operate as originally installed, and (iv) the use of air curtains or similar ventilation methods are not used to meet the requirement for opening protection:

1. Restaurants, hotel and motel conference/meeting rooms, and public and private meeting rooms while these places are being used exclusively for private functions, so long as they are separately ventilated and have a door that remains closed except for the immediate passage of guests and employees from the rest of the facility.
  2. Retail tobacco stores that deal exclusively in the sale of tobacco products and smoking paraphernalia and that are separately ventilated from other attached businesses.
  3. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.
- b. In addition to the locations set forth in paragraph (a), the following areas shall not be subject to the smoking restrictions of this division.
1. Private residences, except when used as a child care, adult day care, group home, health care facility, or similar licensed facility.
  2. On-stage smoking as part of a stage production, ballet or similar exhibition.
  3. Outdoor areas of public places and places of employment except those covered in Section 5 and Section 7 of this Article.
  4. Fraternal lodges and organizations.

#### SECTION 10 Posting Requirements.

- a. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building or other area where smoking is prohibited by this article, by the owner, operator, manager or other person having control of such building or other area.
- b. Every public place where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- c. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager or other person having control of such area.

- d. The minimum size for a sign required by Paragraph (a & b) shall be:

For all businesses (except businesses not regulated): the international four inch by four inch no smoking symbol.

For restaurants that do not allow smoking: a two and one-half inch by nine inch Smoke Free sign with the international no smoking symbol.

For businesses where smoking is not regulated and that offer smoking: a six inch by eighteen inch sign with three inch lettering and with one-half inch strokes that states "Smoking is Permitted in the building".

## SECTION 11 Enforcement.

- a. The Maricopa County Public Health Department and Environmental Services Department are responsible for enforcement.

Any county peace officer or the director of a local health department or public health services district, the environmental health officer and his deputies may issue a citation for violation of Sections 4, 5, 6, and 7.

- b. Notice of the provisions set forth in this division shall be given to all applicants for a Maricopa County business registration. Failure to receive such notice shall not exempt any person from the requirements of this division or its enforcement.
- c. Any individual may register a complaint under this chapter to initiate enforcement.
- d. Any owner, manager, operator, employer or employee of any establishment controlled by this Article shall, upon either observing or being advised of a violation of Section 4, 5, 6, or 7 have the obligation to inform the violator of the appropriate requirements of this law and then request immediate compliance. If the violator continues non-compliance the aforementioned shall notify the enforcement authority.
- e. Any person or employer who owns, manages, operates or otherwise controls the use of any premises subject to this Article has the responsibility:
1. to properly set aside required "no smoking" areas;
  2. to properly post and maintain signs required hereunder; and
- f. By enforcing this Article, the County undertakes only to promote the general welfare. It does not assume, nor does it impose on its officers and employees, an obligation for breach of which it is liable in money damages to any person claiming injury from such breach.

- g. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

## SECTION 12 Providing for Penalties, Enforcement

- a. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this ordinance to fail to comply with any of its provisions.
- b. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this ordinance.
- c. Any person who violates any provision of this ordinance shall be responsible for a petty offense, punishable by:
  - (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
  - (2) A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
  - (3) A fine not exceeding three hundred dollars (\$300) for a third violation within one (1) year.
- d. Any person who violates any provision of this ordinance four or more times in any twenty-four (24) month period may be charged with and found guilty of a class one misdemeanor.

## SECTION 13 Public Education.

The Department of Public Health shall engage in a continuing education program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide business owners, operators and managers in their compliance with the terms of this Ordinance. The continuing education program shall include publication of brochures for affected businesses and citizens, a list of tobacco cessation resources, and a clear explanation of the provisions of this ordinance.

## SECTION 14 Effective date.

This Ordinance shall be effective 150 days after adoption in open public meeting by the Board of Supervisors.

## SECTION 15 Severability.

If any provision, clause, sentence or paragraph of this Article or the application thereof to any person or circumstances is for any reason held to be invalid or unconstitutional, this will not affect the validity of the remaining parts of this Article and to this end the provisions of this article are declared to be severable.

Passed and Adopted by the Board of Supervisors of Maricopa County, Phoenix, Arizona, this \_\_\_\_ day of \_\_\_\_, 2002.

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